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EXAMINER	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ERIC MICHAEL BREITUNG,
GEORGE THEODORE DALAKOS,
PETER JOSEPH CODELLA, and
MANISHA TINANI-MENDLESON

Appeal 2008-003400
Application 10/630,139
Technology Center 1700

Decided: September 11, 2009

Before BRADLEY R. GARRIS, ADRIENE LEPIANE HANLON, and CHARLES F. WARREN, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-18. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

STATEMENT OF THE CASE

Appellants claim a delivery system 100 for a thin film deposition or etching apparatus 112, comprising a heated gas inlet line 142 for delivering a gas 128 to a powered electrode 116 of the apparatus (Figs. 2-3; claim 1).

Further details regarding this claimed subject matter are set forth in representative independent claim 1 which reads as follows:

1. A delivery device for a thin film deposition or etching apparatus, comprising:

a heated gas inlet line for delivering a gas to a powered electrode of the apparatus, the gas inlet line maintained under a vacuum; and

a coupling device located between the powered electrode and the gas inlet line, the coupling device comprising an insulation portion.

The references set forth below are relied upon by the Examiner in the rejections before us:

Countrywood	6,110,540	Aug. 29, 2000
Claims 1-20 of copending application	10/449,975	May 30, 2003

Claims 1-18 are rejected under 35 U.S.C. § 102(b) as being anticipated by Countrywood.

In addition, claims 1-18 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending application 10/449,975.

SUMMARY OF DECISION

The Examiner's § 102 rejection is reversed for reasons explained below.

The Examiner's provisional obviousness-type double patenting rejection has not been contested by Appellants in this appeal (App. Br. 5, Ans. 2-3, Reply Br. 1-2). Therefore, we summarily affirm this rejection.

ISSUE

Have Appellants shown error in the Examiner's finding that the device shown in Figure 3B of Countrywood includes the "heated gas inlet line" required by claim 1?

FINDINGS OF FACT

The Examiner finds that "Countrywood teaches a delivery device . . . comprising: a heated gas (120; Figure 3B) inlet line (conduit for gas from 120; Figure 3B; column 6; line 34 - column 6, line 23) for delivering a gas (120; Figure 3B) to a powered electrode" (Ans. 4).

The Examiner also finds:

> [A]lthough Countrywood teaches "cooling water" supplied through ports 122, 124, 126, 128, and 130 (Figure 3B; column 7; lines 15-23) the relative *temperature* of Countrywood's inlet line and Countrywood's plasma operating environment (Figure 1) may *operate* to heat Countrywood's inlet line (conduit for gas from 120; Figure 3B; column 6; line 34 - column 6, line 23) and is thus capable of being *heated* by passing water (not part of Countrywood's structure) at a slightly higher temperature than the ambient processing temperature of Countrywood's reactor (Figure 1). This *condition* is likely present during start-up of Countrywood's reactor (Figure 1).

(Ans. 9).

PRINCIPLES OF LAW

"To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently." *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997).

ANALYSIS

Appellants argue that "Countrywood does not disclose . . . the claimed element of *a heated gas inlet line" (App. Br. 6).* Further, Appellants disagree with the Examiner's position that the cooling water supplied to Countrywood's device "may *operate* to heat Countrywood's inlet line (conduit for gas from 120; Figure 3B; column 6; line 34 – column 6, line 23) and is thus capable of being *heated* by passing water (not part of Countrywood's structure) at a slightly higher temperature than the ambient processing temperature of Countrywood's reactor" (Ans. 9). According to Appellants, the Examiner's position is based on mere conjecture and appears to be premised on an unsupported inherency theory (Reply Br. 2-4).

These arguments are persuasive. We have reviewed the Countrywood disclosures identified by the Examiner and find therein no express teaching of a heated gas inlet line as required by claim 1. Moreover, the Examiner has provided no rational support for a position that the gas inlet line shown in Figure 3B of Countrywood would be inherently heated. As correctly stated by Appellants, the Examiner's position on this matter is mere conjecture.

For these reasons, the Examiner has failed to establish on this record that Countrywood discloses, either expressly or inherently, the "heated gas inlet line" limitation of claim 1.

CONCLUSION OF LAW

Appellants have shown error in the Examiner's finding that the device shown in Figure 3B of Countrywood includes the "heated gas inlet line" required by claim 1.

Accordingly, we do not sustain the Examiner's § 102 rejection of all appealed claims 1-18 as being anticipated by Countrywood.

ORDER

We reverse the Examiner's decision to reject the appealed claims under 35 U.S.C. § 102(b) but affirm the Examiner's decision to provisionally reject the appealed claims under the judicially created doctrine of obviousness-type double patenting.

Therefore, the Examiner's ultimate decision to reject the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v)(2008).

AFFIRMED

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